**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF PUERTO RICO**

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| **AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC.** | CIVIL NO.: 07- 1658 (JAF) |
| Plaintiff, | |
| v. | BREACH OF CONTRACT; COLLECTION OF MONIES; and DAMAGES. |
| **CEMEX PUERTO RICO; CANOPY ECOTERRA CORP.; XYZ INSURANCE COMPANIES.** | JURY TRIAL DEMANDED |
| Defendants. | |

# MOTION REQUESTING PRELIMINARY INJUNCTION AND MEMORANDUM OF LAW IN SUPPORT THEREOF

**TO THE HONORABLE COURT:**

**NOW APPEARS** Plaintiff **AMERICAN WASTE MANAGEMENT AND RECYCLING**, **LLC,** (hereinafter, "AWMR") and through the undersigned attorneys, respectfully **STATES, ALLEGES** and **REQUESTS** as follows:

## I. INTRODUCTION AND PROCEDURAL BACKGROUND

Plaintiff AWMR hereby petitions this Honorable Court for a preliminary injunction, restraining and enjoining Defendants from detaining its lawfully harvested scrap material from the CEMEX Ponce plant premises, and for specific performance of the removal of the material already extracted at the CEMEX site, which culminated in the unlawful termination of the work contract by co-Defendant Ecoterra and endorsed by CEMEX.

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The facts of the case, more precisely outlined in the Verified Complaint filed on July 23, 2007, deal with a breach of contract resulting from the harvesting and dismantling of sections of the CEMEX plant in Ponce, Puerto Rico. On March 29, 2007, AWMR and Canopy Ecoterra, agent for CEMEX Puerto Rico, entered into a "Purchase Contract for the Purchase of Scrap Metal, Alloys, and Other Items" (hereinafter, "the Purchase Contract") for the purchase of scrap metal including ferrous and non-ferrous metals and all alloys resulting from the harvesting and dismantling of the tanks and structures located at the premises of the CEMEX plant in Ponce, Puerto Rico. *See Exhibit 1 to the Verified Complaint.* Through this Purchase Contract, AWMR acquired the right to dismantle the structure, purchase, and remove the materials from the premises in accordance to the contract between CEMEX and Agent. The Purchase Contract provided that the materials purchased by AWMR were to be sold in "as is, where is" condition, and that its duration would be a period of eight (8) months or the completion of dismantling and extraction of the quantity of goods. The contract further established that at the time AWMR took possession of, and removed the goods from the place of transfer at the premises, title, risk of loss, and all other incidents of ownership to the goods would be transferred from Agent/CEMEX and vested in AWMR.

AWMR submitted directly to CEMEX management a work plan, which was accepted by CEMEX management, and a working protocol was established in order to carry out the job, including establishing office trailers at the premises of CEMEX, an area for storage containers and other equipment, personnel safety and security briefings and protocols regarding weighing of the containers, among others. AWMR engineers and crew met with CEMEX's engineers and crew on a day to day basis and worked hand in hand on the project, in planning and execution of the work plan approved by CEMEX, and security badges were issued to AWMR personnel by CEMEX. *See Exhibit 15 to the Complaint.*

At the request of Agent and CEMEX, a protocol was established for AWMR to bring into CEMEX property its shipping containers and trucks to store and transport the scrap purchased and/or dismantled by AWMR, which were signed into the facility by CEMEX and were registered to AWMR.

As it turns out, the plant was not ready to be dismantled when AMWR commenced work on it. On April 26, 2007, and again on June 18, field reports were sent to CEMEX detailing therein the reasons why AWMR had been unable to work in certain areas of the plant, and why the removal of the materials was not being effected on a greater scale. *See Exhibits 3, 15 of the Verified Complaint*. Certain areas of the plant were simply not ready to be dismantled; walls and ceilings had live wiring still in them, and excessive cement dust and floors covered with several feet of cement, for example, tasks that was not AWMR's responsibility. *See Exhibit 15 of the Verified Complaint.* Furthermore, the presence of asbestos and of oil in motors caused AWMR great concern, due to *potential environment hazards and so informed CEMEX*, and refused to work on the structures in those affected areas. As a result of all these problems, the quantity of the metal harvested during this period slowed down.

On or about two (2) months ago, Ecoterra illegally removed three (3) containers of non-ferrous metal dismantled by AWMR from the CEMEX plant, valued at an amount not less than $250,000.00. Specifically, the containers were loaded with approximately 45 to 46 tons of Burn Bright (red) copper and 8 to 9 tons of aluminum. Those containers were removed after working hours when AWMR's crew had left the premises of CEMEX, and were registered to

AWMR, the goods within were processed by AWMR, and the containers had been locked by AWMR's personnel. The locks were cut by Ecoterra personnel in the presence of CEMEX employees, which was against CEMEX's policy as well as their internal procedures, which were not followed in signing out the containers in question.

CEMEX personnel, Mr. Lozano and Mr. Emmanuelli, requested that AWMR refrain from involving the Police, and that they would intervene to get AWMR's containers back, to no avail. After CEMEX confirmed that Mr. Barsotelli, the owner of Ecoterra would be barred from the site for having stolen AWMR goods, and that they would issue a new purchase contract, the Agent returned the containers empty and no new contract ensued. AWMR then filed their Police report days after the incident. CEMEX has never produced the truck way bills (Bills of Lading) authorizing said release. CEMEX then informed AWMR that it would issue a letter cancelling Ecoterra's contract with CEMEX, but instead, via a letter dated June 5, 2007, counsel for Agent accused AWMR of allegedly breaching the contract, and issued therein a Notice of Termination and a thirty (30) day cure period, as per the contract between the parties. *See Exhibit 7 to the Verified Complaint.*

The letter of termination for alleged non-compliance was sent *with over five (5) months of work still remaining to be performed* in the contract. *Id.* The reasons given for termination were the following:

a. That AWMR was only extracting "valuable" metals from the site;

b. That payment was owed to Agent for material extracted;

c. That insurance certificates naming Agent as insured had not been issued;

d. That no destination had been provided for the metric tons of material that had been extracted so far. *Id.*

Not only did these reasons not meet any of the criteria stipulated in the contract as valid causes for termination, the reasons alleged by Agent for termination were unfounded. Regarding issue "a", the contract did not specify any type of order to be followed for metal extraction. *See Exhibit 1 to the Verified Complaint.* Regarding issue "b", and pursuant to their agreement, AWMR had already paid the Agent (Ecoterra) through wire transfer the monies allegedly owed in advance. *See Exhibit 8 to the Verified Complaint.* Regarding issue "c", said defect was cured within the thirty day cure period provided by Ecoterra. *See Exhibit 1 to this motion*. Finally, item "d"was also complied with, as AWMR must file the Shipper's Export Declaration (SED) for all its shipments and every bill of lading with the Department of Commerce through AES Direct (Automated Export System) at their website: www.aesdirect.gov. This is a public document, and CEMEX was fully appraised of this issue.

Through this Notice of Termination, Ecoterra requested AWMR to immediately cease and desist operating in the premises, and "recommended" in its Notice of Termination that AWMR use the curing period to put itself current in the amounts allegedly owed to Agent, to remove all equipment and material from the premises, and to abandon the CEMEX premises.

CEMEX's managers, however, told AWMR to continue working for at least the next thirty (30) days until the cure period ended – or until July 5, 2007 – during which time CEMEX would cancel their contract with Ecoterra, and work with AWMR to finish the project. In order to achieve this, CEMEX even authorized the construction of a loading dock on the premises in order for the project to continue. AWMR continued to work and removed sufficient non-ferrous metal for at least one container (in order to complete a delivery that was unfulfilled due to Ecoterra having previously taken the goods AWMR had extracted), and processed other metal from the structures and stockpiled them at the site. Furthermore, CEMEX authorized containers to be brought in for loading said material and were signed into the site by CEMEX.

All of a sudden, AWMR was informed that Mr. Barsottelli, accompanied by CEMEX Personnel, was on the site and was inspecting AWMR's loading dock, the new copper container, new containers that it was loading, and new areas that it was cutting, which surprised AWMR, as these actions were effected after a police report had already been filed and investigations were going on. Instead of terminating Ecoterra for having openly stolen from AWMR, however, a letter was issued to Ecoterra stating that all work was to be paralyzed at the site while the issues with AWMR were resolved. *See Exhibit 9 to the Verified Complaint.* Furthermore, on June 26, 2007, CEMEX suddenly instructed AWMR to cease all work, and then instructed AWMR employees to leave the site. AWMR was not given time to secure the site, leaving its equipment was stranded, its office and files left "as is", and international shipping containers with AWMR goods, as well as processed items, on the site. *See Exhibits 10, 15 to the Verified Complaint.* As a matter of fact, due to CEMEX's insistence that AWMR continue to work until the end of the cure period, several containers were to have departed on that day and truckers were forced to leave the site empty handed.

AWMR then asked for their extracted material to be let out of the site, and after CEMEX and Ecoterra agreed to release the containers in writing and AWMR had made arrangements for their removal from the CEMEX site, Ecoterra suddenly withdrew its permission. *See Exhibits 11 and 12 to the Verified Complaint*. Ecoterra subsequently terminated AWMR, and stated that

AWMR only remove the steel and iron, which are of lesser value, and suggested that AWMR sign a waiver of any and all claims against the Ecoterra. *See Exhibits 13 and 14 to the Verified Complaint.*

## II. STANDARD

The standard in order for a preliminary injunction to issue is well established; it is comprised of four (4) elements: 1) substantial likelihood of success on the merits; 2) the injunction must be necessary to prevent irreparable injury; 3) the threatened harm outweighs the harm an injunction would inflict on the non-movant; and 4) the public interest would be served buy such an issuance. *New Comm Wireless Services, Inc. v. SprintCom, Inc.*, 287 F.3d 1, 8-9 (1st Cir. 2002); *Narragansett v. Guilbert*, 934 F.2d 4,5 (1st Cir. 1991).

## III. ARGUMENT

In its Verified Complaint, AWMR alleges claims for Specific Performance, breach of contract, fraud, and sought damages as a result thereof. The First Amended Complaint establishes facts that entitle AWMR to an injunction that precludes Defendant, CEMEX and its agents or employees from preventing AWMR, its employees or representatives from accessing CEMEX's premises to remove the subject scrap metals they have harvested and remove their equipment and/or their personal belongings such as computers, files etc. While CEMEX has invited AWMR to withdraw its equipment and belongings, Ecoterra has steadfastly refused to release the containers of copper and aluminum in the CEMEX site, stating no valid reason whatsoever for that refusal. *As a matter of fact, Ecoterra's refusal came after written permission had already been granted by Ecoterra to AWMR to withdraw the containers and after AWMR had already made arrangements for the pickup and shipments of these containers*. CEMEX, at the same time, has stated that it will not allow the containers to be withdrawn from the site until Ecoterra and AWMR reach an agreement as to the containers.

As is well known, the purpose of the preliminary injunction is to preserve the status quo. *Pye v. Teamsters Local Union No. 122,.* 61 F.3d 1013, *1021 (1st Cir. 1995) *citing CMM Cable Rep., Inc. v. Ocean Coast Props., Inc.,* 48 F.3d 618, 620 (1st Cir.1995)("The purpose of a preliminary injunction is to preserve the *status quo*, freezing an existing situation so as to permit the [ultimate trier of the issues], upon full adjudication of the case's merits, more effectively to remedy discerned wrongs."). Naturally, the *status quo* is the status of the respective parties' positions prior to, or at the time of, the lawsuit was filed. CEMEX has violated the status quo by ousting AWMR, its employees and representatives from their facility, and preventing their access to the facility and to withdraw the subject scrap metals that are ready to be shipped - an ouster caused by Defendant's failure to remedy Ecoterra's illegal action in stealing AWMR's copper and aluminum containers.

It is undisputed – and AWMR invites Defendants to prove otherwise – that AWMR removed the subject scrap metals currently at the site and prepared them for immediate removal from the CEMEX site. Thus, to prevent the natural injustice resulting from CEMEX's denial of access to AWMR and its employees to the site to remove and ship the subject scrap metal, the past, current and ongoing damage to AWMR's reputation and goodwill and the incalculable losses caused thereby, and so as to preserve the status quo that existed prior to AWMR being illegally evicted from the site, an injunction is necessary until there is a final determination of the merits of the original action.

A. Plaintiffs Have Shown a Substantial Likelihood of Success on the Merits

The issues in this case are simple:

1. AWMR was performing its duties per the contract;

2. Ecoterra realized the value of the material being extracted and stoleit with CEMEX's aid and acquiescence;

3. Ecoterra retaliated against AWMR because it filed a Police Report and started an investigation;

4. Bad faith termination is obvious, when 5 months of work still remained to be performed on the contract.

As the record before this Court confirms, AWMR stands a reasonable probability of success on the merits in this case. CEMEX and their agent Ecoterra has undeniably breached the Contract after AWMR's partial performance under the Contract.

Regarding the contractual terms, the contract is very clear that Ecoterra was paid *in advance* for all the metal harvested and removed from the site prior to the date that Ecoterra stole AWMR's property and hijacked AWMR's shipping containers. *see Exhibit 8 to the Verified Complaint.* Therefore, the allegation that monies were owed to Ecoterra is inapposite as a valid cancellation reason. In fact, there was no valid breach of the contractual terms by AWMR as alleged by Ecoterra, as outlined above, and Ecoterra's reasons for termination, with over five (5) months of work yet to be performed, cannot seriously be considered valid. In other words, the contract was terminated too early in order to Ecoterra to readily ascertain that AWMR would be unable to meet the contractual goals and comply with the same.

Regarding the illegal exit of AWMR containers containing copper from the site, it is undisputed that all shipping containers for scrap metal coming into CEMEX facilities were signed in CEMEX facilities as AWMR containers. The containers that were taken by Ecoterra could only have been done so with CEMEX's acquiescence, as they were broken into and their locks broken after hours and after AWMR personnel had left the site. Due to the irregularity of this request, CEMEX weigh stations employees refused to sign a blank way bill permitting the exit of the containers. The way bill was eventually signed out by Mr. Ramiro Lozano, in contravention of CEMEX regulations and procedures. The way bill that allowed the copper and aluminum belonging to AWMR to be taken out of the CEMEX premises has been requested by AWMR, but has never be produced to Plaintiff.

As of today, six containers of metal harvested by AWMR sits in the site (and two empty ones), with Ecoterra and CEMEX refusing to allow their exit from the site. These eight containers are sitting on CEMEX's lot precisely because CEMEX management requested AWMR work until the very last minute of the last day of the cure period. Before the cure period expired, however, AWMR employees and its officer engineers were forcibly and illegally removed by CEMEX personnel. To make matters worse, and upon information and belief, Ecoterra is back on the CEMEX site *and actively working on dismantling the plant as of this writing.* CEMEX is permitting Ecoterra to take the materials harvested by AWMR, allowing Ecoterra to extract materials fruit of AWMR's labor and equipment, and which AWMR has made readily accessible for extraction.

CEMEX, through and through, ratified the Purchase Contract by which AWMR bought the scrap metal from the plant through its acknowledgment of the workplan and day to day operations and working with the engineers of CEMEX and AWMR. CEMEX, is further liable by ousting and detaining AWMR's scrap and equipment and also allowing Ecoterra and Mr. Barsotelli (while there is an ongoing criminal investigation in the conduct of Ecoterra and Mr. Barsotelli) back on the premises and denying AWMR access to their own harvested material, which it clearly owns according to the terms of the contract, and is in fact, currently loaded onto containers which were checked into the CEMEX site by AWMR.

While the subject scrap metal harvested through the expense and labor of AWMR and its contractors sits idle on the Facility, the metals are being made available to Ecoterra for removal from the Facility. Certainly, by denying AWMR and its employees or representatives access to the Facility to remove the subject scrap metals, CEMEX is forever impairing AWMR from not only recovering the fruit of its own labor and expense, but also from meeting its consequent contractual obligations with other entities (secondary purchasers) for the readied scrap metal and materials, which had AWMR had previously contracted with. Certainly, as AWMR and its employees partially performed under the Contract prior to being wrongfully ousted by Defendants from the site, AWMR is entitled to the subject scrap metals per the contract signed between the parties. In light of the foregoing, it is evident that injustice will most certainly result if AWMR, its employees or representatives are not provided access to the readied scrap metals which are loaded and ready for shipment.

Finally, with respect to damages arising out of a breach of contract, it is a basic tenet of contract law that a legal remedy (e.g., a sum of money) is presumptively preferable to an equitable remedy ( e.g., specific performance), so long as the former is adequate and ascertainable. See 3 *Farnsworth on Contracts*, § 12.4, and *Pritzker v. Yari,* 42 F.3d 53, 72 (1st Cir. 1994). Regarding the existing containers that are ready to be shipped, AWMR stands ready to pay to CEMEX and Ecoterra the agreed – upon price of $30. 00 of material per metric ton of material removed. AWMR cannot do so, however, until it is allowed to go onto CEMEX's Facility to remove the readied scrap metal waiting at the site, and which it took down, and obtain the weight of same. As mentioned herein, however, AWMR has been, and continues to be, willing and able to perform that obligation.

Regarding the material already extracted, AWMR requests specific performance of the same, for reasons that will be outlined in the following section dealing with irreparable harm.

B. AWMR has suffered and will suffer irreparable harm if relief is denied

It has been stated that "Irreparable harm is an essential prerequisite for a grant of injunctive relief." *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 217 F.3d 8, 13 (1st Cir. 2000); *see also Matos ex rel. Matos v. Clinton Sch.*, 367 F.3d 68, 73 (1st Cir. 2004). In the case at bar, injunctive relief is appropriate because AWMR has suffered and will continue to suffer irreparable harm without access to the subject scrap metals and material. Relevant legal precedent abundantly recognizes the irreparable harm consequent to an impairment of an individual or entity's reputation and goodwill. *See e.g.,Semaphore Entertainment Group Sports Corp. v. Gonzalez*, 919 F.Supp. 543, 550 (D. Puerto Rico, 1996)("Further, there is compliance with the irreparable harm criteria when the harm is not easily quantifiable, such as when the action that is sought to be enjoined would besmirch plaintiffs' business credibility, reputation, and good will"); *Planned Parenthood v. Citizens for Com. Action, 558 F.2d 861, 867 (8th Cir.1977); Cutler-Hammer, Inc. v. Universal Relay Corp., 285 F.Supp. 636, 639 (D.N.Y.1968); Kos Pharmaceuticals, Inc. v. Andrx Corp.*, 369 F.3d 700, 726 (3d Cir. 2004) (stating that "[grounds for irreparable injury include loss of control of reputation, loss of trade, and loss of good will.') *citing Pappan Enters., Inc. v. Hardee's Food Sys., Inc.*, 143 F.3d 800 (3d Cir. 1998).

As was detailed in the Verified Complaint, AWMR is a reputable scrap metal provider whose success and viability is premised on its good reputation and goodwill. Because of its reputation for delivering scrap metal material as contracted-for and at the times contracted-for, AWMR has been able to procure favorable relationships with its clients which result in contractual terms which are more favorable to AWMR than those which other scrap metal providers can commonly procure in the industry, such as not being required to tender performance bonds (a costly measure for AWMR) or AWMR's receipt of advance payment.

Because of CEMEX's breach of the Contract and because its and Ecoterra's continued refusal to allow AWMR to remove the subject metals from the site, AWMR has had to refund monies and, more importantly, has had to respond to queries from its clients regarding AWMR's inability to deliver the scrap metal it contracted to sell to those entities – items indicative of an existing, and continuing, impairment of its reputation and goodwill. Accordingly, without the relief requested of this Court, AWMR's reputation and goodwill will continue to evaporate and AWMR will continue to suffer losses which are incalculable. There is simply no way to determine in money or damages terms the manner in which the ongoing impairment to AWMR's and its representatives' goodwill and reputation will affect AWMR and its representatives in future contracts and its business as a whole.

As stated above, courts have also found irreparable harm where, as here, damages are difficult to ascertain. By its very definition, irreparable harm in the context of an injunction "consists of substantial injury that is not accurately measurable to adequately compensable by money damages". *Quiles Rodríguez v. Calderón*, 172 F.Supp.2d 334 (D. Puerto Rico 2001); *see also Ross-Simons of Warwick, Inc.,* 217 F.3d 8; *and DeNovellis v. Shalala*, 135 F.3d 58 (1st Cir. 1988). There are no blueprints for CEMEX plant being taken down indicating the quantities of metal therein, so the metals are unquantifiable at this time.

In this case, monetary damages are not adequate because AWMR's losses relative to its inability to remove the subject scrap metal from the Facility are incalculable. In this vein, at the time it entered into the subject Contract with CEMEX and Ecoterra, AWMR entered into subsequent obligations whereby it bound itself to other entities to deliver the scrap metal which it was to remove from CEMEX's facility. Therefore, given that scrap metal is a scarce commodity, aside from stating its claims for Specific Performance in this case, AWMR has been attempting, and continues to attempt, to procure scrap metal on the market at elevated prices to meet those obligations. Moreover, as referenced above, it is simply impossible to secure the elevated price at which AWMR will have to purchase scrap metal from other sources, if any are available, as a substitute for the scrap metal which is lying idle on CEMEX's Facility and which has been made ready for removal and shipment.

Finally, as a result of the subject Contract, AWMR is obligated to pay its truckers, shipping lines, equipment rental companies without being able to remove and ship the subject scrap metal from CEMEX's Facility, AWMR is subjected to irreparable harm in the form of undeterminable amounts of additional liabilities consequent to the damage which its contractors are also incurring for which AWMR is, or may be, ultimately liable for under the circumstances. *See Exhibit 2 to this motion*. By Ecoterra insisting that the metal be given to them, and CEMEX refusing to release it, both are causing irreparable harm to AWMR.

C. The threatened harm to AWMR outweighs the harm an injunction would inflict on the non-movant

As described herein, AWMR will suffer irreparable injury if the court does not enter an injunction. If the injunction is entered, however, and Defendants are required essentially to specifically perform their duties to allow access to the Facility so as to allow AWMR to remove and ship the subject scrap metal, the Defendants will not be harmed. In this respect, with the issuance of the injunction, AWMR seeks only to remove the scrap metal materials which, as confirmed by Defendants' workplan, endorsed by the Defendants and which were also in accordance with the Purchase Contract, it is already entitled to remove and ship from the site. Quite the opposite will occur if the injunction is granted: as opposed to incurring damages, Defendants will receive the very benefit which they originally contracted for – the payment of $30 per metric ton of scrap metal removed from the Facility. Therefore, no harm can possibly ensue from the issuance of the injunction.

d. The public interest would be served by the issuance of an injunction.

An injunction in the case at bar would serve the public interest. It has been long established that, notwithstanding the inherent interest in preventing injustice, the public interest favors the enforcement contractual and property rights. *See Lucas-Insertco Pharmaceutical Printing Co. of Maryland LLC v. Salzano*, 124 F.Supp.2d 27 (D. Puerto Rico,2000)( holding that it that the public interest in the integrity of contractual relations is furthered by the issuance of the preliminary injunction, because the public has an interest in seeing that contracts between parties are honored); *see also Boston Celtics Ltd. Partnership v. Shaw*, 908 F.2d 1041, 1049 (1st Cir.1990). Surely the public interest in this case would favor the granting of the requested injunctive relief, as manifest injustice has occurred, and continues to occur, as a result of Defendants' continued breach of their obligations.

Furthermore, as AWMR explained to CEMEX in a letter dated June 27, 2007, the metal already harvested can be a health hazard for various reasons. *See Exhibit 10 of the Verified Complaint*. First, AWMR was forced to leave the site in a hurry when it was evicted by CEMEX, and there was no tine to secure several of the structures that AWMR was working on, which will slowly over time become unstable as hurricane season approaches. As the structure was dismantled or taken down, some of the supports were weakened or removed, and may crack under pressure. Consequently, they represent a dangerous condition for the unwary.

Second, the rain water can collect in it over a period of time and mosquitoes can breed. The CEMEX facility lies in the heart of Ponce community, where residential houses are within a thousand meters around it. The rain are not only causing water to collect and mosquitoes to breed, but it is further causing the metals to rust and the water to filter to the underground water level.

## IV. CONCLUSION

Based on the foregoing argument and authorities, AWMR requests this Court to issue a preliminary injunction against both co-Defendants. To this end, Plaintiffs seeks an injunction to compel specific performance;

(a) requiring CEMEX to provide AWMR and its employees access to the CEMEX facility to remove and ship the containers of various metals which are in shipping containers and ready for removal from the site;

(b) requiring CEMEX to provide AWMR remove and ship all metal harvested on the ground which has also been ready to be shipped.

(c) requiring CEMEX to provide AWMR, its employees and representatives access to the CEMEX Facility for a sufficient length of time to accomplish the removal and shipment of all metal structures that they have partially worked on and are ready to be finished and the metal shipped and access to secure all unstable structures;

(d) Requiring CEMEX to return the 45 - 46 tons of Burn Bright (red) copper and 8 to 9 tons of aluminum that were stolen; AWMR will be satisfied with the return of the original the items, or in the alternative, with a replacement bought in the market.

(e) granting such other and further relief as this court deems just and proper under the law.

Plaintiff AWMR agrees to give Security as required by this Court pursuant to Fed. R. Civ. P. 65(c), in whatever amount the Court determines is appropriate in this case, and requests that a hearing be set for the next available date on the Court's calendar.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 2nd day of August, 2007.

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